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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/091,860
Filing Date: March 06, 2002
Appellant(s): COX ET AL.

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GROUP 3600

Doyle B. Johnson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 23, 2007 appealing from the Office
action mailed May 24, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6057764	Williams	05-2000
JP 10-48008	Omron	02-1998
2002/0184055	Naghavi	12-2002
20020111725	Burge	08-2002
6604080	Kern	08-2003

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0184055 to Naghavi in view of US Patent Number 6,057,764 to Williams and in further view of Japanese Patent Number 10-48008 (hereinafter referred to as JP'008) to Omron and in even further view of US Patent Application Publication 2002/0111725 to Burge.

(A) As per claim 1, Naghavi teaches a method for assessing risk to a human in an environment, wherein the environment includes multiple areas (Naghavi: Abstract), the method comprising,

using data to derive a risk assessment (Naghavi: Section [0114]).

In Naghavi the data that is used to derive the risk assessment does not include data on detecting the presence of a human in at least one area, however, gathering this type of data is well known in the art as evidenced by Williams (Col. 6, Ln. 9-22). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the method of Naghavi with the aforementioned feature from Williams with the motivation of having a means

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of calculating a risk assessment based upon data on the presence of individuals in certain environments, as recited in Williams (Col. 5, Ln. 63-67).

The combined method of Naghavi and Williams do not teach or suggest the feature of tracking the amount of time a human is present in at least one area, however, this feature is taught by JP'008 (Abstract). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the teachings of Naghavi in view of Williams in view of JP'008 with the aforementioned teachings from JP'008 with the motivation of providing a means wherein a use of the method could judge the presence of a person within a predetermined measurement range, as recited in JP'008 (Abstract).

The above references do not teach tracking a person in an area in order to make a risk assessment or calculate an insurance premium or more generally measuring a risk in real-time in order to assess a risk or calculate an insurance premium, however, this concept is well known in the insurance industry as illustrated by Burge (Figure 1 and Sections [0057] and [0195]). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the combined teachings in the references above with the aforementioned teachings from Burge with the motivation of being able to calculate more accurate rates, as recited in Burge (Section [0001]). (Note: In Burge the actual risk is a function of the amount of time the vehicle is on the road because this is when there is a risk of an accident. For worker's compensation insurance the risk is a function of the amount of time a worker is in a hazardous area, such as a coal mine. Therefore, at the time of the invention, one of ordinary skill in the art in the insurance industry would have used the teachings from Burge to come up with a more accurate way of calculating worker's compensation insurance rates by actually measuring the

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time a worker is exposed to a risk in a hazardous area similar to how in Burge the premium is calculated according to the amount of time a car is exposed to a risk of being involved in an automobile accident.)

(B) As per claim 2, in the combined method of Naghavi in view of Williams in view of JP'008 the step of detecting includes a substep of using a sensor to detect the presence of the human in an area (Williams: Col. 2, Ln. 24-35 and JP'008: Abstract). The motivation for making the aforementioned modification to the method of Naghavi is the same as set forth in the rejection of claim 1 above.

(C) As per claim 3, in the combined method of Naghavi in view of Williams in view of JP'008 the step of detecting includes using a radio-frequency identification badge (Williams: Col. 6, Ln. 18-22). The motivation for making the aforementioned modification to the method of Naghavi is the same as set forth in the rejection of claim 1 above.

(D) As per claim 4, in the combined method of Naghavi in view of Williams in view of JP'008 the step of detecting includes a card reader (Williams: Col. 2, Ln. 24-35). The motivation for making the aforementioned modification to the method of Naghavi is the same as set forth in the rejection of claim 1 above.

(E) As per claim 5, in the combined method of Naghavi in view of Williams in view of JP'008 the step of detecting includes a substep of association an identification of the human with the detection (Williams: Col. 2, Ln. 24-35 and Col. 6, Ln. 9-22). The motivation for making the aforementioned modification to the method of Naghavi is the same as set forth in the rejection of claim 1 above.

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(F) As per claim 10, Naghavi teaches an apparatus for obtaining data to determine insurance premium (Naghavi: Abstract), the apparatus comprising:

a processor for receiving a signal from a sensor wherein the processors receive data derived from the signal to determine, at least in part, a risk assessment (Naghavi: Sections [0025], [033] and [0114]).

Naghavi does not teach that the apparatus comprises at least one sensor for determining the presence of a human in at least one area, however, gathering this type of data is well known in the art as evidenced by Williams (Col. 6, Ln. 9-22). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the apparatus of Naghavi with the aforementioned feature from Williams with the motivation of having a means of calculating a risk assessment based upon data on the presence of individuals in certain environments, as recited in Williams (Col. 5, Ln. 63-67). The combined apparatus of Naghavi in view of Williams in view of JP'008 also does not teach the step of determining an insurance rate, however, Naghavi, as noted above, does teach the step of determining a risk assessment and the examiner takes Official Notice that it is well known in the insurance industry to determine an insurance rate from a risk assessment and at the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined apparatus of Naghavi in view of Williams in view of JP'008 with the above aforementioned feature with the motivation of having a means of producing a bill to send or transmit to the payor of the insurance (worker's compensation) policy.

The combined method of Naghavi and Williams do not teach or suggest the feature of tracking the amount of time a human is present in at least one area, however, this feature is

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taught by JP'008 (Abstract). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the teachings of Naghavi in view of Williams in view of JP'008 with the aforementioned teachings from JP'008 with the motivation of providing a means wherein a use of the method could judge the presence of a person within a predetermined measurement range, as recited in JP'008 (Abstract).

The above references do not teach tracking a person in an area in order to make a risk assessment or calculate an insurance premium or more generally measuring a risk in real-time in order to assess a risk or calculate an insurance premium, however, this concept is well known in the insurance industry as illustrated by Burge (Figure 1 and Sections [0057] and [0195]). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the combined teachings in the references above with the aforementioned teachings from Burge with the motivation of being able to calculate more accurate rates, as recited in Burge (Section [0001]). (Note: In Burge the actual risk is a function of the amount of time the vehicle is on the road because this is when there is a risk of an accident. For worker's compensation insurance the risk is a function of the amount of time a worker is in a hazardous area, such as a coal mine. Therefore, at the time of the invention, one of ordinary skill in the art in the insurance industry would have used the teachings from Burge to come up with a more accurate way of calculating worker's compensation insurance rates by actually measuring the time a worker is exposed to a risk in a hazardous area similar to how in Burge the premium is calculated according to the amount of time a car is exposed to a risk of being involved in an automobile accident.)

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3. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi in view of Williams in view of JP'008 as applied to Claim 1, above, and in further view of US Patent Number 6,604,080 to Kern.

(A) As per claims 6-9, the combined method of Naghavi in view of Williams in view of JP'008 does not teach using the measure of risk exposure in a worker's compensation program nor does it teach using at least a portion of the risk assessment to determine premiums to be paid by an employer nor does it teach using at least a portion of the risk assessment to determine benefit payments to be made by an insurer nor does it teach using at least a portion of the risk assessment to determine projections for the worker's compensation program, however, the examiner takes the position that these features are well known in the insurance industry as evidenced by Kern (Col. 7, Ln. 64-Col. 8, Ln. 15). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined method of Naghavi in view of Williams in view of JP'008 with these aforementioned features from Kern with the motivation of calculating the cash flow amounts in a worker's compensation program and with the motivation of having a means of being able to bill the payor of the insurance policy, as recited in Kern (Col. 8, Ln. 10-15).

4. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP'008 in view of Williams in view of Naghavi in view of Kern in view of Burge.

(A) As per claim 11, the combined method of JP'008 in view of Kern teaches determining an insurance premium for a worker in an environment, the method comprising:

defining at least one liability zone within the environment (JP'008: Abstract) (Note: In JP'008 the "liability zones" are called areas, however the examiner takes the position that it is

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within the scope of the teachings of JP'008 that the its invention can be used in a liability zone or a high risk zone because the purpose of JP'008 is to monitor people in a certain areas and frequently areas that are monitored by sensing apparatuses are high risk or high liability areas);

detecting a worker's (human's) presence in the at least one liability zone, and tracking an amount of time the worker spends in the at least one liability zone (JP'008: Abstract),

JP'008 does not teach the step of calculating an insurance premium based at least in part on the amount of time the worker spends in the at least one liability zone, however, this feature is well known in the insurance industry as evidenced by Kern (Col. 7, Ln. 64-Col. 8, Ln. 15). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined method of JP'008 with these aforementioned features from Kern with the motivation of calculating the cash flow amounts in a worker's compensation program and with the motivation of having a means of being able to bill the payor of the insurance policy, as recited in Kern (Col. 8, Ln. 10-15).

The above references do not teach tracking a person in an area in order to make a risk assessment or calculate an insurance premium or more generally measuring a risk in real-time in order to assess a risk or calculate an insurance premium, however, this concept is well known in the insurance industry as illustrated by Burge (Figure 1 and Sections [0057] and [0195]). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the combined teachings in the references above with the aforementioned teachings from Burge with the motivation of being able to calculate more accurate rates, as recited in Burge (Section [0001]). (Note: In Burge the actual risk is a function of the amount of time the vehicle is on the road because this is when there is a risk of an accident. For worker's

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compensation insurance the risk is a function of the amount of time a worker is in a hazardous area, such as a coal mine. Therefore, at the time of the invention, one of ordinary skill in the art in the insurance industry would have used the teachings from Burge to come up with a more accurate way of calculating worker's compensation insurance rates by actually measuring the time a worker is exposed to a risk in a hazardous area similar to how in Burge the premium is calculated according to the amount of time a car is exposed to a risk of being involved in an automobile accident.)

(B) As per claims 12 and 13, JP'008 does not explicitly teach that at least two different liability zones are defined, and wherein the liability zones have different hazard levels and JP'008 does not explicitly teach that the amount of time the worker spends in each liability zone is separately tracked and used to calculate an insurance premium, however, the examiner takes the position that it is within the scope of JP'008 (Abstract) that its invention can be used to detect the presence of humans in two separate and areas with varying risk (liability) assuming the equipment required to carry out the invention is mass produced. It is also within the scope of JP'008 (Abstract) that for each particular area that is monitored with the invention taught in JP'008 (Abstract) each apparatus will track the time humans are present in their respective tracking areas (measurement ranges) separately.

(C) As per claim 14, the combined method of JP'008 in view of Kern teaches a system for determining a worker's compensation insurance premium, wherein a work environment has at least one liability zone, the system comprising:

at least one sensor to detect a presence of a worker in the at least one liability zone

(JP'008: Abstract);

a processor for tracking an amount of time the worker is present in the at least one liability zone, based on input from the at least one sensor (JP'008: Abstract) (Note: In JP'008 the "liability zones" are called areas, however the examiner takes the position that it is within the scope of the teachings of JP'008 that the its invention can be used in a liability zone or a high risk zone because the purpose of JP'008 is to monitor people in a certain areas and frequently areas that are monitored by sensing apparatuses are high risk or high liability areas);

JP'008 does not teach the following:

wherein the amount of time the worker is present in the at least one liability zone is used at least in part to calculate a worker's compensation insurance premium for the worker, however, this feature is well known in the insurance industry as evidenced by Kern (Col. 7, Ln. 64-Col. 8, Ln. 15). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined method of JP'008 with these aforementioned features from Kern with the motivation of calculating the cash flow amounts in a worker's compensation program and with the motivation of having a means of being able to bill the payor of the insurance policy, as recited in Kern (Col. 8, Ln. 10-15).

The above references do not teach tracking a person in an area in order to make a risk assessment or calculate an insurance premium or more generally measuring a risk in real-time in order to assess a risk or calculate an insurance premium, however, this concept is well known in the insurance industry as illustrated by Burge (Figure 1 and Sections [0057] and [0195]). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the combined teachings in the references above with the aforementioned teachings from Burge with the motivation of being able to calculate more accurate rates, as recited in

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Burge (Section [0001]). (Note: In Burge the actual risk is a function of the amount of time the vehicle is on the road because this is when there is a risk of an accident. For worker's compensation insurance the risk is a function of the amount of time a worker is in a hazardous area, such as a coal mine. Therefore, at the time of the invention, one of ordinary skill in the art in the insurance industry would have used the teachings from Burge to come up with a more accurate way of calculating worker's compensation insurance rates by actually measuring the time a worker is exposed to a risk in a hazardous area similar to how in Burge the premium is calculated according to the amount of time a car is exposed to a risk of being involved in an automobile accident.)

5. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0184055 to Naghavi in view of US Patent Number 6,057,764 to Williams and in further view of Japanese Patent Number 10-48008 (hereinafter referred to as JP'008) to Omron and in further view of US Patent Application Publication 2002/0111725 to Burge and in even further view of Official Notice.

(A) As per claim 15-18, these claims are substantially similar to Claim 1 except that they relate to a plurality of zones where a human is exposed to risk and these claims set forth the steps of calculating risk and insurance premiums for each of the zones. This feature is not taught in the above mentioned references, per se, however the Examiner takes Official Notice that this feature is well known in the insurance industry (i.e. the procedure whereby risk is divided into distinct zones and a measure of risk and an insurance premium is calculating for each zone). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have

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modified the above references with the aforementioned teachings to more accurately estimate the risk in an area having various levels of risk.

(10) Response to Argument

(1) Applicants argue that the prior art does not teach the step of tracking a person in an area in order to make a risk assessment or calculate an insurance premium. However, as pointed out in the rejection of Claim 1, above, the Omron reference teaches this feature (Abstract).

(2) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(3) Applicants argue that the prior art references used in the rejection do not teach the step of calculating or determining an insurance premium, however, the Office would like to point out that independent claims 1, 10 and 14 do not recite a step of calculating or determining an insurance premium.

(4) Applicants argue that the prior art references used in the rejection do not teach the step of determining a worker's compensation rate, however, independent claims 1, 10 and 11 do not recite this step.

(5) Applicants generally argue against the combination of references used to reject the claims. However, as per *KSR v. Teleflex*, if, in a combination of prior art references, the

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functions of the prior art are not modified and the combination yields predictable results then the combination is considered to be obvious to one of ordinary skill in the art.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

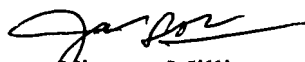
For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,


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Conferees:


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